

**APPENDIX B-8**

**STANDARD TERMS AND CONDITIONS  
FOR**

**SUBCONTRACTS TO PURCHASE  
COMMERCIAL ITEMS**

**October 1, 2008**

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**Clause 1. SECURITY AND ACCESS REQUIREMENTS FOR SUBCONTRACT WORK PERFORMED AT NREL OPERATED FACILITIES (SPECIAL) (AUG 2008)**

*Derived from NREL 08.100-02*

*[Applies to all subcontracts where Subcontractors' employees (or lower-tier Subcontractors' employees) and their officers, agents, or other persons representing the Subcontractor will enter onto NREL operated facilities, including Government-owned or leased property.]*

- (a) Security requirements.
  - (1) NREL has established security requirements to govern access onto NREL operated facilities by the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers, agents, and any other persons representing the Subcontractor.
    - (i) The introduction of certain "controlled" commodities and/or activities on the NREL operated facilities is prohibited. Prohibited articles include firearms, explosive devices, incendiary devices, dangerous weapons or materials, controlled substances (illegal drugs), alcoholic beverages, and livestock. NREL operated facilities and DOE-owned or-leased property is closed to all hunting.
  - (2) As a condition of entry to NREL operated facilities, the Subcontractor agrees to permit NREL Security personnel to search the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents' vehicles, packages, tool boxes, or other containers for the purpose of preventing prohibited articles to be brought onto NREL operated facilities or to detect or deter the unauthorized removal of Government property from NREL operated facilities.
  - (3) The Subcontractor is solely responsible for the security of the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents' materials and equipment at the NREL operated facilities. Any security system the Subcontractor may elect to use (fences, keys, alarms, etc.) must be coordinated with the NREL Technical Monitor.
  - (4) The Subcontractor is responsible to advise the NREL Technical Monitor promptly of any non-routine events, occurrences, incidents, accidents, etc., particularly in situations involving lost time accidents and ambulance runs, occurring under this subcontract.
  - (5) NREL Security reserves the right to revoke site access authorization for any person violating NREL or DOE security policies and procedures.
- (b) Access requirements for U.S. citizens.
  - (1) Access to NREL operated facilities is controlled in accordance with the DOE's security requirements. The Subcontractor shall ensure that any of the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents who will enter onto the NREL operated facilities are specifically authorized site access under the NREL requirements set forth in the NREL Access Control Policy and Program, including identification, badging, and registration by NREL Security. A two-week advance notice to NREL Security processed through the NREL Subcontract Administrator is required prior to access by U.S. citizens.
- (c) Access requirements for persons who are not U.S. citizens.
  - (1) The Subcontractor shall ensure that any of the Subcontractor's employees (or its lower-tier Subcontractors' employees) and their officers, and agents who will enter onto NREL operated facilities and who are not U.S. citizens meet the requirements set forth in NREL's Foreign National Management Policy and Program, including: (a) appropriate work authorization documentation

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- (i.e. Visa); (b) completion of an NREL Foreign National Data Card; and (c) NREL Manager-level approval.
- (2) Foreign Nationals from DOE-designated "Sensitive Countries" will be processed for a Federal background check. This process requires a minimum of two weeks. Foreign Nationals from DOE-designated "Terrorist Supporting Countries" will not be allowed. The Subcontractor should contact the NREL Subcontract Administrator to obtain the most current listing of "Sensitive Countries" and "Terrorist Supporting Countries."
- (i) It is the Subcontractor's responsibility to obtain and provide all necessary information and documentation to meet NREL, DOE, and Federal requirements regarding Subcontractors' employees (or its lower-tier Subcontractors' employees) and their officers' and agents' work authorization and identification to the NREL Technical Monitor and the NREL Subcontract Administrator to meet the appropriate time frames for NREL Security to process and approve the request for access. Any person(s) denied access by NREL Security or DOE shall not be assigned by the Subcontractor to enter onto or perform subcontract work at NREL operated facilities.
- (3) Prior to the initiation of a subcontract that requires entry onto NREL operated facilities, the Subcontractor shall provide to the NREL Subcontract Administrator advance notice and necessary evidence (including Visa types and expiration dates) that legally sufficient work permits have been obtained from the U.S. Citizenship and Immigration Services. Further, the Subcontractor is responsible to ensure that such permits are properly maintained for any of the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents who are not U.S. citizens for the duration of subcontract work at NREL operated facilities.
- (4) After the Subcontractor (and its lower-tier Subcontractors) has commenced work under the subcontract, the Subcontractor shall provide to the NREL Subcontract Administrator the same advance notice and necessary evidence (including Visa types and expiration dates) for all subsequently assigned individuals who are not U.S. citizens who will enter onto NREL operated facilities.
- (d) Access Requirements for all persons.
- (1) All persons entering NREL operated facilities must display a valid NREL (or DOE) issued identification badge. The Subcontractor is responsible to coordinate badge requirements for entrance onto NREL operated facilities for all the Subcontractor's employees (and lower-tier Subcontractors' employees) and their officers and agents to ensure the display and return of all issued badges.
- (2) The Subcontractor is responsible to coordinate with the NREL Technical Monitor all vehicle parking requirements needed to perform the subcontract work on the NREL operated facilities. Vehicle access by Subcontractors and other visitors to the NREL operated facilities is controlled on a 24-hour, 7-day per week basis.
- (3) The Subcontractor is cautioned that effective January 1, 2007, the Colorado Revised Statutes (CRS 8-2-122) require employers that transact business in Colorado to comply with employment verification requirements to affirm that the employer has examined the legal work status of newly-hired employees and has retained file copies of the documents required by the Federal Immigration Reform and Control Act (8 USC 1324a).

- (e) The Subcontractor shall include this clause, including this Paragraph (e), in all lower-tier subcontracts that require entry onto NREL operated facilities.”

**Clause 2. SUBCONTRACTOR QUALITY REPRESENTATIONS (SPECIAL) (APR 2006)**

*Derived from NREL 08.100-06*

*(Applies to all subcontracts where items or components are to be supplied or delivered in conjunction with services to be performed. Applies to all construction subcontracts.)*

- (a) The Subcontractor represents that: 1) suspect or counterfeit supplies and components and 2) misrepresented parts or items are not provided as part of this subcontract. The Subcontractor further represents that original equipment manufacturer's parts or factory authorized non-OEM parts will be used for repair or maintenance services as a part of this subcontract.
- (b) The Subcontractor represents that the supplies and components are new, including recycled (not new or reconditioned) and are not of such an age or so deteriorated as to impair their usefulness or safety. Furthermore, the Subcontractor shall not furnish any item that is residual inventory resulting from terminated Government contracts/subcontracts or former Government surplus property. All items or components furnished under this procurement action shall comply with the terms and specifications herein.

**Clause 3. COMMERCIAL ITEMS - SUBCONTRACT TERMS AND CONDITIONS (SPECIAL) (OCT 2008)**

*Derived from FAR 52.212-4 (FEB 2007)*

*(Applies to the acquisition of commercial items.)*

- (a) Inspection/Acceptance. The Subcontractor shall only tender for acceptance those items that conform to the requirements of this subcontract. NREL reserves the right to inspect or test any supplies or services that have been tendered for acceptance. NREL may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in subcontract price. If repair/replacement or reperformance will not correct the defects or is not possible, the NREL/Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. NREL must exercise its post-acceptance rights –
- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- (b) Assignment. The Subcontractor or its assignee may assign its rights to receive payment due as a result of performance of this subcontract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C.3727). However, when a third party makes payment (e.g., use of the Government wide commercial purchase card), the Subcontractor may not assign its rights to receive payment under this subcontract. If directed by the Department of Energy, NREL may, without notice, assign or transfer all its rights and obligations under this Subcontract to a successor Contractor, DOE, or its designee.

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- (c) Changes. Changes in the terms and conditions of this subcontract may be made only by written agreement of the parties.
- (d) Subcontract Issues and Disputes (Special) (Sep 2007)
  - (1) It is NREL's practice to try to resolve all contractual issues by mutual agreement at the NREL Subcontract Administrator's level, without litigation. Both parties hereby agree to explore all reasonable avenues for negotiations in order to avoid a dispute. Either party may provide written notice to the other party to conduct negotiations for a period not to exceed sixty calendar days. After sixty calendar days, if possibilities for negotiations have failed, either party shall have thirty calendar days to request that the potential dispute be moved to Alternative Dispute Resolution (ADR). Within fifteen calendar days after receiving a request to move to ADR, if ADR procedures are not acceptable to the non-moving party, a written explanation citing specific reasons for rejecting ADR as inappropriate for resolution of the dispute shall be provided to the moving party. If the parties are unable to agree on the application of ADR procedures to resolve the potential dispute or are unable to satisfactorily resolve the dispute using ADR procedures for a period not to exceed ninety calendar days (or such longer period as mutually agreed in writing), the parties shall resume the formal process authorized in this clause.
  - (2) The parties agree that the appropriate forum for litigation of any dispute pertaining to this subcontract shall be a court of competent jurisdiction as follows:
    - (i) Subject to paragraph (b) provided, however, that in the event that the requirements for jurisdiction in any Federal District Court are not present, such litigation shall be brought in a court of competent jurisdiction in the county of Jefferson and State of Colorado.
    - (ii) Provided however, that in the event that the requirements for jurisdiction in any Federal District Court are not present, such litigation shall be brought in a court of competent jurisdiction in the county of Jefferson and State of Colorado.
  - (3) Any substantive issue of law in such litigation shall be determined in accordance with the body of applicable Federal law relating to the interpretation and application of clauses derived from Federal Acquisition Regulations and the Department of Energy Acquisition Regulations that implement and supplement the FAR. If there is no applicable Federal law, the law of the State of Colorado shall apply in the determination of such issues. Conflict of law provisions shall not determine applicable governing law. Nothing in this clause shall grant to the Subcontractor by implication any statutory rights or remedies not expressly set forth in this subcontract.
  - (4) There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this subcontract pending final resolution of any subcontractual issues, disputes, or litigation arising under or related to this subcontract between the parties hereto or between the Subcontractor and lower-tier Subcontractors or suppliers.
  - (5) The Contract Disputes Act of 1978 (41 U.S.C. Sections 60 1-613) shall not apply to this subcontract; provided, however, that nothing in this clause shall prohibit NREL, in its sole discretion, from sponsoring a dispute of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that NREL so sponsors a dispute at the request of the

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Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as NREL.

- (6) Any disputes relative to intellectual property matters will be governed by other provisions of this subcontract.
- (e) Definitions.(Oct 2008)
  - (1) "Head of the Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy.
  - (2) "Commercial component" means any component that is a commercial item.
  - (3) "Commercial item" means-
    - (i) Any item, other than real property, that is of a type customarily used for non-governmental purposes and that—
      - (A) Has been sold, leased, or licensed to the general public; or
      - (B) Has been offered for sale, lease, or license to the general public;
    - (ii) Any item that evolved from an item described in paragraph (3)(i) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under an NREL/Government solicitation;
    - (iii) Any item that would satisfy a criterion expressed in paragraphs (3)(i) or (3)(ii) of this clause, but for
      - (A) Modifications of a type customarily available in the commercial marketplace; or
      - (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet NREL or Federal Government requirements. "Minor" modifications mean modifications that do not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
    - (iv) Any combination of items meeting the requirements of paragraphs (3) (i), (ii), (iii), or (v) of this clause that are of a type customarily combined and sold in combination to the general public;
    - (v) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (3) (i), (ii), (iii), or (iv) of this clause, and if the source of such services—
      - (A) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
      - (B) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
    - (vi) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established

- catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
- (vii) Any item, combination of items, or service referred to in subparagraphs (3)(i) through (3)(vi), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Subcontractor; or
  - (viii) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.
- (4) "Component" means any item supplied to the Federal Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9 (a) and 52.225-11 (a).
  - (5) "DOE Contracting Officer" means a person with the authority to enter into, administer, and/or terminate DOE prime contracts and make related determinations and findings. The term includes certain authorized representatives of the DOE Contracting Officer acting within the limits of their authority as delegated by the DOE Contracting Officer.
  - (6) "NREL Subcontract Administrator" means an employee of the National Renewable Energy Laboratory with the authority to enter into, administer, and/or terminate subcontracts under a DOE prime contract and make related determinations and findings. The term includes certain authorized representatives of the NREL Subcontract Administrator acting within the limits of their authority as delegated by the NREL.
  - (7) "Non-developmental item" means
    - (i) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
    - (ii) Any item described in paragraph (7)(i) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of NREL or a procuring department or agency; or
    - (iii) Any item of supply being produced that does not meet the requirements of paragraph (7) (i) or (7) (ii) solely because the item is not yet in use.
  - (8) Except as otherwise provided in this subcontract, the terms "subcontracts" and "lower-tier subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders.
  - (9) The term "DOE" means the Department of Energy.
  - (10) "Contractor" or "DOE Prime Contractor" means the entity managing and operating the National Renewable Energy Laboratory under prime contract to the U.S. Department of Energy. The National Renewable Energy Laboratory (NREL) is a Department of Energy-owned national laboratory, managed and operated by the DOE Prime Contractor.
  - (11) The term "DOE Directive" means DOE Orders and Notices, modifications thereto and other forms of directives, including for purposes of this subcontract those portions of DOE's Accounting and Procedures Handbook

applicable to Contractors, issued by DOE. The term does not include temporary written instructions by the DOE Contracting Officer or the NREL Subcontract Administrator for the purpose of addressing short-term or urgent DOE or NREL concerns relating to health, safety, or the environment.

- (f) Excusable delays. The Subcontractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Subcontractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Subcontractor shall notify the NREL Subcontract Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the NREL Subcontract Administrator of the cessation of such occurrence.
- (g) Invoice.
  - (1) The Subcontractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the subcontract to receive invoices. An invoice must include --
    - (i) Name and address of the Subcontractor;
    - (ii) Invoice date and number;
    - (iii) Subcontract number, subcontract line item number and, if applicable, the order number;
    - (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
    - (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
    - (vi) Terms of any discount for prompt payment offered;
    - (vii) Name and address of official to whom payment is to be sent;
    - (viii) Name, title, and phone number of person to notify in event of defective invoice; and
    - (ix) [Reserved]
    - (x) [Reserved]
  - (2) Invoices will be handled in accordance with the Prime Contractor's DOE-approved procurement system.
- (h) Patent indemnity. The Subcontractor shall indemnify NREL and the Government and their officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this subcontract, provided the Subcontractor is reasonably notified of such claims and proceedings.
- (i) Payment.
  - (1) Items accepted. Payment shall be made for items accepted by NREL that have been delivered to the delivery destinations set forth in this subcontract.
  - (2) NREL will make payment in accordance with the payment terms stated in the subcontract.
  - (3) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

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- (4) Overpayments. If the Subcontractor becomes aware of a duplicate subcontract financing or invoice payment or that NREL has otherwise overpaid on a subcontract financing or invoice payment, the Subcontractor shall immediately notify the NREL Subcontract Administrator and request instructions for disposition of the overpayment.
- (j) Risk of loss. Unless the subcontract specifically provides otherwise, risk of loss or damage to the supplies provided under this subcontract shall remain with the Subcontractor until, and shall pass to the Government upon:
  - (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
  - (2) Delivery of the supplies to NREL at the destination specified in the subcontract, if transportation is f.o.b. destination.
- (k) Taxes. The subcontract price includes all applicable Federal, State, and local taxes and duties.
- (l) Termination for NREL/Government's convenience. NREL/Government reserves the right to terminate this subcontract, or any part hereof, for its sole convenience. In the event of such termination, the Subcontractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and lower-tier Subcontractors to cease work. Subject to the terms of this subcontract, the Subcontractor shall be paid a percentage of the subcontract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Subcontractor can demonstrate to the satisfaction of NREL using its standard record keeping system, have resulted from the termination. The Subcontractor shall not be required to comply with the cost accounting standards or subcontract cost principles for this purpose. This paragraph does not give NREL or the Government any right to audit the Subcontractor's records. The Subcontractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- (m) Termination for cause. NREL/Government may terminate this subcontract, or any part hereof, for cause in the event of any default by the Subcontractor, or if the Subcontractor fails to comply with any subcontract terms and conditions, or fails to provide NREL/Government, upon request, with adequate assurances of future performance. In the event of termination for cause, NREL/Government shall not be liable to the Subcontractor for any amount for supplies or services not accepted, and the Subcontractor shall be liable to NREL/Government for any and all rights and remedies provided by law. If it is determined that the NREL/Government improperly terminated this subcontract for default, such termination shall be deemed a termination for convenience.
- (n) Title. Unless specified elsewhere in this subcontract, title to items furnished under this subcontract shall pass to the Government upon acceptance, regardless of when or where NREL or the Government takes physical possession.
- (o) Warranty. The Subcontractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this subcontract.
- (p) Limitation of liability. Except as otherwise provided by an express warranty, the Subcontractor will not be liable to NREL/Government for consequential damages resulting from any defect or deficiencies in accepted items.
- (q) Other compliances. The Subcontractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this subcontract.
- (r) Compliance with laws unique to Government subcontracts. The Subcontractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of

- appropriated funds to influence certain Federal subcontracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.
- (s) (s) Order of precedence. Any inconsistencies in this solicitation or subcontract shall be resolved by giving precedence in the following order:
- (1) The schedule of supplies/services.
  - (2) The Assignments, Issues and Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Subcontracts paragraphs of this clause.
  - (3) The clause at 52.212-5. Subcontract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items.
  - (4) Addenda to this solicitation or subcontract, including any license agreements for computer software.
  - (5) Solicitation provisions if this is a solicitation.
  - (6) Other paragraphs of this clause.
  - (7) [Reserved]
  - (8) Other documents, exhibits, and attachments.
  - (9) The specification.

**Clause 4. SUBCONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (SPECIAL) (OCT 2008)**

*Derived from FAR 52.212-5 (DEC 2007)*

*(Applies to subcontracts for the acquisition of commercial items.)*

- (a) The Subcontractor agrees comply with the following FAR clauses, which are incorporated in this subcontract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:
- (1) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).
  - (2) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Pub. L. 108-77, 108-78)
- (b) The Subcontractor agrees comply with the FAR clauses in this paragraph (b) that the NREL Subcontract Administrator has indicated as being incorporated in this subcontract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items:
- (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).
  - (2) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)).
  - (3) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).
  - (4) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
  - (5) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
  - (6) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
  - (7) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).
  - (8) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
  - (9) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).

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- (10) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).
  - (11) 52.225-1, Buy American Act—Supplies (June 2003) (41 U.S.C. 10a-10d).
  - (12) 52.225-5, Trade Agreements (Nov 2007) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
  - (13) 52.225-13, Restrictions on Certain Foreign Purchases (June 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
  - (14) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Alternate I (Apr 2003) of 52.247-64.
- (c) The Subcontractor agrees to comply with the FAR clauses in this paragraph (c), applicable to commercial services, which the NREL Subcontract Administrator has indicated as being incorporated in this subcontract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items:
- (1) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).
- (d) Comptroller General Examination of Record. The Subcontractor agrees to comply with the provisions of this paragraph (d) if this subcontract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold (\$100,000), and does not contain the clause at 52.215-2, Audit and Records—Negotiation.
- (1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract.
  - (2) The Subcontractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this subcontract. If this subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for (three) 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this subcontract shall be made available until such appeals, litigation, or claims are finally resolved.
  - (3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Subcontractor to create or maintain any record that the Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Subcontractor is not required to include any FAR clause, other than those in paragraphs (i) through (vii) of this paragraph in a lower-tier for commercial items or commercial components. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—
- (i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d) (2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the Subcontractor must include

- 52.219-8 in lower-tier subcontracts that offer subcontracting opportunities.
- (ii) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
  - (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).
  - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
  - (v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).
  - (vi) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).
  - (vii) 52.222-50, Combating Trafficking in Persons (Aug 2007) (22 U.S.C. 7104(g)). Flow down required in accordance with paragraph (f) of FAR clause 52.222-50.
  - (viii) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (Nov 2007) (41 U.S.C. 351, et seq.).
  - (ix) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (Nov 2007) (41 U.S.C. 351, et seq.).
  - (x) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.
- (2) While not required, the Subcontractor may include in its lower-tier for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

**Clause 5. NOTIFICATION OF CHANGE IN OWNERSHIP AND/OR NAME (SPECIAL)  
(OCT 2008)**

*Derived from FAR 52.215-19 (FD) (OCT 1997)*

*(Applies to all subcontracts.)*

- (a) The Subcontractor shall make the following notifications in writing:
  - (1) When the Subcontractor becomes aware that a change in its ownership or name has occurred, or is certain to occur, the Subcontractor shall provide such notification in accordance with NREL's novation and name change procedures.
  - (2) When a change that could result in changes in the valuation of the Subcontractor's capitalized assets in the accounting records or any other asset valuations or cost changes, the Subcontractor shall provide such notification to the NREL Subcontract Administrator within 30 days.
- (b) In the event of change in ownership, the Subcontractor shall—
  - (1) Maintain current, accurate, and complete inventory records of assets and their costs.
  - (2) Provide the NREL Subcontract Administrator or designated representative ready access to the records upon request;
  - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are

- identified accurately before and after each of the Subcontractor's ownership changes; and
- (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.
  - (c) The Subcontractor shall include the substance of this clause in all lower-tier subcontracts where it is contemplated that cost or pricing data will be required or for which any pre-award or post-award cost determination is subject to FAR 31.2, cost principles and procedures applicable to commercial organizations. The Subcontractor shall notify the NREL Subcontract Administrator of the change in ownership or name of any lower-tier Subcontractor subject to the terms of this clause.

**Clause 6. DRUG-FREE WORKPLACE (MAY 2001)**

*Derived from FAR 52-223-6 (FD)*

*(Applies to all subcontracts where work is to be performed on NREL operated facilities, including Government-owned or - leased property.)*

- (a) Definitions.
  - (1) "Controlled substance," as used in this clause, means a controlled substance in subcontract schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.
  - (2) "Conviction," as used in this clause, means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.
  - (3) "Criminal drug statute," as used in this clause, means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.
  - (4) "Drug-free workplace," as used in this clause, means the NREL-operated site(s) for the performance of work done by the Subcontractor in connection with a specific subcontract where employees of the Subcontractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
  - (5) "Employee," as used in this clause, means an employee of a Subcontractor directly engaged in the performance of work under a NREL subcontract. "Directly engaged" is defined to include all direct cost employees and any other Subcontractor employee who has other than a minimal impact or involvement in subcontract performance.
  - (6) "Individual," as used in this clause, means a Subcontractor that has no more than one employee including the Subcontractor.
- (b) The Subcontractor, if other than an individual, shall—within thirty (30) days after award (unless a longer period is agreed to in writing for subcontracts of thirty (30) days or more performance duration), or as soon as possible for subcontracts of less than thirty (30) days performance duration—
  - (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Subcontractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

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- (2) Establish an ongoing drug-free awareness program to inform such employees about—
  - (i) The dangers of drug abuse in the workplace;
  - (ii) The Subcontractor's policy of maintaining a drug-free workplace;
  - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Provide all employees engaged in performance of the Subcontract with a copy of the statement required by subparagraph (b)(1) of this clause;
- (4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this Subcontract, the employee will—
  - (i) Abide by the terms of the statement; and
  - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction;
- (5) Notify the NREL Subcontract Administrator in writing within ten (10) days after receiving notice under subdivision (b) (4) (ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within thirty (30) days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
  - (i) Taking appropriate personnel action against such employee, up to and including termination; or
  - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and
  - (iii) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b) (1) through (b) (6) of this clause.
- (c) The Subcontractor, if an individual, agrees by award of the subcontract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this subcontract.
- (d) In addition to other remedies available to the NREL and the Government, the Subcontractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Subcontractor subject to suspension of subcontract payments, termination of the subcontract or default, and suspension or debarment."

**Clause 7. ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (SPECIAL) (OCT 2008)**

*Derived from FAR 52.223-15 (DEC 2007) (FD)*

*(Applies to subcontracts where energy consuming products will be delivered, acquired, or furnished for (i) use by the Subcontractor or NREL on DOE-owned or -leased facilities or (ii) construction, renovation, or maintenance of DOE-owned or -leased facilities.)*

- (a) Definition. As used in this clause—
  - (1) “Energy-efficient product”—
    - (i) Means a product that—
      - (A) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or
    - (ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program.
  - (2) [Reserved.]
- (b) The Subcontractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of subcontract award, for products that are—
  - (1) Delivered;
  - (2) Acquired by the Subcontractor for use in performing services at a DOE-owned or -leased facility;
  - (3) Furnished by the Subcontractor for use by NREL/Government; or
  - (4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.
- (c) The requirements of paragraph (b) apply to the Subcontractor (including any lower-tier Subcontractor) unless—
  - (1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
  - (2) Otherwise approved in writing by the NREL Subcontract Administrator.
- (d) Information about these products is available for—
  - (1) ENERGY STAR® at <http://www.energystar.gov/products>; and
  - (2) FEMP at [http://www1.eere.energy.gov/femp/procurement/eep\\_requirements.html](http://www1.eere.energy.gov/femp/procurement/eep_requirements.html).

**Clause 8. DUTY-FREE ENTRY (FEB 2000)**

*Derived from FAR 52.225-8 (FD)*

*(Applies to subcontracts exceeding \$100,000 where supplies are imported into the United States and duty-free entry may be obtained or subcontract value is less than \$100,000 and savings from waiving the duty is anticipated to be more than the administrative cost of waiving the duty.)*

- (a) Definition.
  - (1) “Customs territory of the United States” means the States, the District of Columbia, and Puerto Rico.
- (b) Except as otherwise approved by the NREL Subcontract Administrator, the Subcontractor shall not include in the subcontract price any amount for duties on supplies specifically identified in the subcontract schedule to be accorded duty-free entry.

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- (c) Except as provided in paragraph (d) of this clause or elsewhere in this subcontract, the following procedures apply to supplies not identified in the subcontract schedule to be accorded duty-free entry:
- (1) The Subcontractor shall notify the NREL Subcontract Administrator in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$10,000 that are to be imported into the customs territory of the United States for delivery to NREL under this subcontract, either as end products or for incorporation into end products. The Subcontractor shall furnish the notice to the NREL Subcontract Administrator at least twenty (20) calendar days before the importation. The notice shall identify the—
    - (i) Foreign supplies;
    - (ii) Estimated amount of duty; and
    - (iii) Country of origin.
  - (2) The NREL Subcontract Administrator will determine whether any of these supplies should be accorded duty-free entry and will notify the Subcontractor within ten (10) calendar days after receipt of the Subcontractor's notification.
  - (3) Except as otherwise approved by the NREL Subcontract Administrator, the subcontract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.
- (d) The Subcontractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if—
- (1) The supplies are identical in nature to items purchased by the Subcontractor or any lower-tier Subcontractor in connection with its commercial business; and
  - (2) Segregation of these supplies to ensure use only on NREL/Government subcontracts containing duty-free entry provisions is not economical or feasible.
- (e) The Subcontractor shall claim duty-free entry only for supplies to be delivered to NREL under this subcontract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the NREL Subcontract Administrator, diverted to nongovernmental use.
- (f) NREL will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Subcontractor in obtaining duty-free entry for these supplies.
- (g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to NREL/DOE in care of the Subcontractor and shall include the—
- (1) Delivery address of the Subcontractor (or NREL/DOE, if appropriate);
  - (2) NREL's DOE prime contract number and the NREL subcontract number;
  - (3) Identification of carrier;
  - (4) Notation "UNITED STATES GOVERNMENT, \_\_\_\_\_ [agency], \_\_\_\_\_ Duty-free entry to be claimed pursuant to Item No(s) \_\_\_\_\_ [from Tariff subcontract schedules] \_\_\_\_\_, Harmonized Tariff subcontract schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [cognizant subcontract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";
  - (5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

- (6) Estimated value in United States dollars.
- (h) The Subcontractor shall instruct the foreign supplier to—
  - (1) Consign the shipment as specified in paragraph (g) of this clause;
  - (2) Mark all packages with the words "UNITED STATES GOVERNMENT" and "NREL/DOE"; and
  - (3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.
- (i) The Subcontractor shall provide written notice to the NREL Subcontract Administrator immediately after notification that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the subcontract schedule, upon award by the Subcontractor to the overseas supplier. The notice shall identify the—
  - (1) Foreign supplies;
  - (2) Country of origin;
  - (3) Subcontract number; and
  - (4) Subcontract schedule delivery date(s).
- (j) The Subcontractor shall include the substance of this clause in any lower-tier subcontract if—
  - (1) Supplies identified in the subcontract schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or
  - (2) Other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

**Clause 9. STOP WORK ORDER (AUG 1989) AND ALTERNATE 1 - COST REIMBURSEMENT (APR 1984)**

*Derived from FAR 52.242-15*

*(Applies to all subcontracts.)*

*(Alternate 1 applies to cost-type subcontracts.)*

- (a) The NREL Subcontract Administrator may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all or any part of the work called for by this subcontract for a period of ninety (90) days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop-work is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, the NREL Subcontract Administrator shall either—
  - (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the Default or the Termination clause of this subcontract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. The NREL Subcontract Administrator shall make an equitable adjustment and the subcontract shall be modified, in writing, accordingly, if—
  - (1) The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this subcontract; and

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- (2) The Subcontractor asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage provided that, if the NREL Subcontract Administrator decides the facts justify the action, the NREL Subcontract Administrator may receive and act upon the claim submitted at any time before final payment under this subcontract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of NREL/Government, the NREL Subcontract Administrator shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the NREL Subcontract Administrator shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

***ALTERNATE I (APR 1984)***

If this clause is inserted in a cost reimbursement subcontract, substitute in paragraph (a) (2) the words, "the Termination clause of this subcontract" for the words "the Default, or the Termination for Convenience of NREL/Government clause of this subcontract." In paragraph (b) substitute the words "an equitable adjustment in the delivery subcontract schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the subcontract that may be affected" for the words, "an equitable adjustment in the delivery subcontract schedule or subcontract price, or both."